

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

AUTO-OWNERS INSURANCE COMPANY
on behalf of itself and all others similarly situated,

Plaintiffs

v.

AUTO PARTS INDUSTRIAL, CO., LTD;
CORNERSTONE AUTO PARTS, LLC;
GORDON AUTO BODY PARTS;
GORDON AUTO BODY PARTS USA CORP.
JUI LI ENTERPRISES COMPANY LTD.;
TAIWAN KAI YIH INDUSTRIAL CO., LTD.;
and TYG PRODUCTS, L.P.

Defendants.

Case No. 2:11-cv-00131

**ORDER GRANTING
PLAINTIFF AUTO-OWNERS
INSURANCE COMPANY'S
MOTION FOR VOLUNTARY
DISMISSAL WITHOUT
PREJUDICE**

1. Plaintiff has moved to voluntarily dismiss this action without prejudice, pursuant to Fed. R. Civ. P. Rules 41(a) and 23(e). Rule 41(a)(1) provides:

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment;

...

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state court-action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

2. This lawsuit has not been previously filed by the Plaintiff nor has it been certified as a class action. In addition, none of the Defendants have filed answers or motions for summary judgment in this lawsuit.

3. Fed. R. of Civ. P. 23(e) provides that, “The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Because this case has not been certified, the limitation of Rule 23(e) does not apply in this case.

4. Further, Fed. R. Civ. P. 23.1(c) applies to derivative actions, Fed. R. Civ. P. 23.2 applies to actions relating to unincorporated associations, and Fed. R. Civ. P. 66 applies to receivers. This action does not involve a derivative action, an action relating to unincorporated associations, or an action involving a receiver. Thus, none of the limitations listed in Rule 41 are applicable in this action.

5. Plaintiff has satisfied the requirements of Fed. R. Civ. P. Rules 41 and 23(e), for a voluntary dismissal of this action without prejudice.

WHEREFORE, for all the above reasons, Plaintiff Auto-Owners Insurance Company’s Motion for Voluntary Dismissal Without Prejudice is GRANTED, and this action is DISMISSED WITHOUT PREJUDICE. IT IS SO ORDERED.

Dated at Milwaukee, Wisconsin February 14, 2011.

/s _____
Honorable Lynn Adelman
United States District Judge